

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MBIA INSURANCE CORPORATION and )  
WELLS FARGO BANK, N.A. (f/k/a WELLS )  
FARGO BANK MINNESOTA N.A.) as )  
TRUSTEE OF SFC GRANTOR TRUST, )  
SERIES 2000-1, SFC GRANTOR TRUST, )  
SERIES 2000-2, SFC GRANTOR TRUST, )  
SERIES 2000-3, SFC GRANTOR TRUST, ) C.A. No. .  
SERIES 2000-4, SFC GRANTOR TRUST, ) 02-1294-JJF  
SERIES 2001-1, SFC GRANTOR TRUST, )  
SERIES 2001-2, SFC OWNER TRUST 2001-1, )  
AND SFC GRANTOR TRUST, SERIES 2001-3, )

Plaintiffs/Counterclaim Defendants, )

vs. )

ROYAL INDEMNITY COMPANY, )

Defendant/Counterclaim Plaintiff. )

TRACK(I) WITNESS:  
DAVID R. ZULAUF

DATE:

OCTOBER 20, 2006

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ROYAL INDEMNITY COMPANY, )

Third-Party Plaintiff, )

vs. )

ANDREW N. YAO, STUDENT LOAN SERVICING LLC, )  
STUDENT LOAN ACCEPTANCE II LLC, STUDENT LOAN )  
ACCEPTANCE III LLC, STUDENT LOAN ACCEPTANCE )  
III LLC, STUDENT LOAN ACCEPTANCE V LLC, )  
STUDENT LOAN ACCEPTANCE VIII LLC, STUDENT )  
LOAN ACCEPTANCE IX LLC, SFC FINANCIAL LLC I, )  
SFC FINANCIAL LLC II, SFC FINANCIAL LLC VI, )  
SFC FINANCIAL LLC VII, )

Third-Party Defendants. )

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ROYAL INDEMNITY COMPANY, )

Counter-Claimant, )

vs. )

MBIA BANK and WELLS FARGO BANK MINNESOTA, N.A., )

Counter-Defendants. )

1 as lawyer for Pepper Hamilton. 12:52:46

2 MR. BUTLER: I'm Jason Butler on behalf of 12:52:48

3 McGladrey & Pullen and Michael Aquino. 12:52:50

4 MR. GIFFORD: Robert Gifford on behalf of 12:52:52

5 Royal Indemnity. 12:52:55

6 MR. ARZ: Roderick Arz on behalf of 12:52:57

7 McGladrey & Pullen and Michael Aquino. 12:52:59

8 MS. BAUER: Lisa Bauer on behalf of MBIA 12:53:02

9 and Wells Fargo as trustee. 12:53:04

10 VIDEOGRAPHER: And on the phone? 12:53:08

11 MR. EPSTEIN: Neil Epstein on behalf of Rod 12:53:10

12 Gagne in his role other than as an attorney, Pam 12:53:15

13 Gagne, Robert Bast, and some Family Trusts. 12:53:18

14 MS. GOODMAN: Lois Goodman on behalf of 12:53:22

15 Charles Stanziale, Bankruptcy Trustee. 12:53:24

16 VIDEOGRAPHER: Would the court reporter 12:53:29

17 please swear in the witness? 12:53:30

18 \* \* \* \* \*

19 DAVID R. ZULAUF, TRACK I,

20 of lawful age, produced, sworn and examined, deposes

21 and says:

22 \* \* \* \* \*

23 MR. PELLETIER: I just want to make clear 12:53:41

24 for the videotape record that there are a number of 12:53:42

25 related cases here that weren't mentioned. I'm not 12:53:44

1	got a phone call from -- what's his name, the	01:00:19
2	president of Student Finance, Gary Hawthorne, about a	01:00:25
3	week before I started telling me that they are having	01:00:32
4	problems getting their credit insurance renewed, and	01:00:36
5	that it might be -- it might be, you know, risky or	01:00:41
6	the going concern of the company might -- it might be	01:00:46
7	more risky than what I had signed up for.	01:00:49
8	Q. I think I forgot to ask you, what was your	01:00:52
9	position? What position were you hired for at Student	01:00:54
10	Finance?	01:00:57
11	A. Vice president of finance.	01:00:57
12	Q. Gary Hawthorne called you a week before you	01:00:58
13	started and told you that they were losing their	01:01:07
14	credit insurance line and said that that could prove a	01:01:08
15	problem for the -- for SFC going forward; is that	01:01:11
16	correct?	01:01:15
17	A. That's correct.	01:01:15
18	Q. At that time did he tell you that Royal	01:01:15
19	Insurance Company was the credit insurance -- credit	01:01:20
20	risk insurance company?	01:01:24
21	A. I don't believe he disclosed that.	01:01:24
22	Q. Can you explain to me when you started at	01:01:28
23	SFC in April of 2002 what the hierarchy was of the	01:01:31
24	company?	01:01:35
25	A. Gary Hawthorne was the president. I'm not	01:01:35

1 other than Diane Messick about this proposal? 02:12:20

2 A. I can't say I did for sure, no. 02:12:22

3 Q. Based on your experience with SFC, who was 02:12:26

4 primarily responsible for running the day-to-day 02:12:49

5 operations of the company? 02:12:51

6 A. Prebankruptcy that would be Gary Hawthorne. 02:12:52

7 Q. Postbankruptcy who would it be? 02:12:59

8 A. Probably me. I'm trying to recall. I 02:13:05

9 think at some point Gary was taken off of the payroll. 02:13:17

10 Q. Was Rod Gagne responsible for running the 02:13:20

11 day-to-day operations of SFC at any point? 02:13:25

12 A. No. 02:13:28

13 Q. Did anybody ever tell you that he was 02:13:29

14 responsible for running the day-to-day operations? 02:13:31

15 A. No. 02:13:33

16 Q. Based on your experience with SFC, who was 02:13:33

17 responsible for setting the interest rate on student 02:13:38

18 loans? 02:13:43

19 A. I don't think that ever happened during my 02:13:43

20 tenure at Student Finance, so I can't say for sure. 02:13:47

21 Q. To your knowledge, was Rod Gagne ever 02:13:50

22 responsible for setting interest rates on loans to 02:13:55

23 students? 02:13:58

24 A. Couldn't say. It was before my time. 02:13:58

25 Q. Based on your experience with SFC, who 02:14:00

1 decided on the interest rate paid to investors? 02:14:08

2 A. I don't know how that was determined. 02:14:10

3 Q. To your knowledge, did Rod Gagne ever have 02:14:15

4 any role in setting interest rates paid to investors? 02:14:18

5 A. Can't say. I wasn't there. 02:14:21

6 Q. Based on your experience with SFC, who 02:14:22

7 decided which schools SFC would purchase loans from? 02:14:32

8 A. By position I'd say Perry Turnbull with 02:14:36

9 Andrew Yao, but that didn't happen while I was there. 02:14:46

10 Q. To your knowledge, did Rod Gagne ever 02:14:50

11 decide which schools SFC would purchase loans from? 02:14:53

12 A. I don't -- I don't know. 02:14:55

13 Q. Did anybody ever tell you that he was in 02:14:58

14 that -- played that role? 02:15:00

15 A. No. 02:15:01

16 Q. Based on your experience with SFC, who 02:15:01

17 decided which loans would be securitized? 02:15:08

18 A. I don't know. I don't know. 02:15:15

19 Q. To your knowledge, did Rod Gagne ever make 02:15:16

20 that decision? 02:15:18

21 A. Can't say I know. 02:15:19

22 Q. Based on your experience with SFC, did Rod 02:15:21

23 Gagne oversee the work of SFC employees ever? 02:15:31

24 A. Not during my tenure. 02:15:34

25 Q. Do you know if Rod Gagne ever prepared 02:15:37

1 employment guidelines for SFC employees? 02:15:45

2 A. I don't know. I -- not while I was there 02:15:47

3 that I'm aware. 02:15:52

4 Q. To your knowledge, was Rod Gagne 02:15:53

5 responsible for making personnel decisions at SFC 02:16:00

6 ever? 02:16:02

7 A. Not to my knowledge. 02:16:02

8 Q. You never heard of Rod Gagne firing 02:16:03

9 someone? 02:16:06

10 A. I never heard of that. 02:16:06

11 Q. Have you ever heard of Rod Gagne hiring 02:16:08

12 someone at SFC? 02:16:10

13 A. No. 02:16:11

14 Q. Have you ever heard of Rod Gagne setting 02:16:11

15 the salary of someone at SFC? 02:16:16

16 A. No. 02:16:18

17 Q. Based on your experience with SFC, who made 02:16:18

18 the decisions about shareholder distributions? 02:16:25

19 A. I don't -- I don't recall. The only person 02:16:28

20 that I would think would have made any recommendations 02:16:36

21 on that would have been Andrew Yao. 02:16:40

22 Q. Are you aware whether or not Rod Gagne ever 02:16:41

23 made decisions on shareholder distributions? 02:16:46

24 A. I can't say. I don't know. 02:16:48

25 Q. Based on your experience at SFC, who 02:16:51

1 prepared the servicer reports?

02:16:56

2 A. Rob Schrof, I believe, was the one in  
3 charge of that, as long as he was there.

02:17:00

02:17:07

4 Q. Are you aware of whether or not Rod Gagne  
5 ever prepared the servicer reports at SFC?

02:17:12

02:17:15

6 A. I'm not aware of it, no.

02:17:18

7 Q. Are you aware of whether or not Rod Gagne  
8 received servicer reports from SFC?

02:17:21

02:17:24

9 A. I don't know if he was on the distribution  
10 or not.

02:17:26

02:17:28

11 Q. Generally who was on the distribution of --  
12 for receiving servicer reports?

02:17:28

02:17:31

13 A. I don't know. I'd have to go back to the  
14 Schrof distribution to find out.

02:17:32

02:17:36

15 Q. When you say "Schruf distribution," what  
16 does -- what -- what are you referring to?

02:17:38

02:17:40

17 A. The distribution of the servicer reports,  
18 whatever -- whoever was on the list to receive them.  
19 I don't know who was.

02:17:42

02:17:45

02:17:49

20 Q. Is it your understanding that there was a  
21 defined definite list of who was to receive servicer  
22 reports?

02:17:50

02:17:51

02:17:54

23 A. I think there was a list that was required  
24 by the securitization documents in terms of who needed  
25 to receive those, and those were the ones that should

02:17:54

02:17:57

02:18:01

1	have received them.	02:18:03
2	Q. Based on your experience at SFC, did Rod	02:18:04
3	Gagne ever prepare financial statements for the	02:18:13
4	company?	02:18:15
5	A. Not that I'm aware of.	02:18:15
6	Q. Do you ever recall seeing financial	02:18:17
7	statements for the company?	02:18:19
8	A. Yes.	02:18:20
9	Q. Are you aware of whether or not Rod Gagne	02:18:21
10	ever received financial statements from the company?	02:18:25
11	A. I don't know.	02:18:27
12	Q. You -- you personally never sent Rod Gagne	02:18:28
13	a financial statement from the company; is that	02:18:33
14	correct?	02:18:36
15	A. I don't know if I did or didn't.	02:18:36
16	Q. Based on your experience with SFC, who	02:18:38
17	decided when SFC would transfer funds to SMS or SLS?	02:18:45
18	A. That would probably be a decision that	02:18:51
19	Andrew Yao would make.	02:18:57
20	Q. Are you --	02:18:58
21	A. Go ahead.	02:19:01
22	Q. Are you aware of whether Rod Gagne ever	02:19:02
23	made that decision?	02:19:04
24	A. No.	02:19:05
25	Q. Do you know -- do you have any personal	02:19:05



1 freestanding document on the server? 02:31:40

2 MR. PELLETIER: It was floating around as a 02:31:42

3 freestanding document on the server, but that is not 02:31:44

4 to say that it wasn't at some point attached to an 02:31:46

5 e-mail. 02:31:48

6 MR. BUTLER: Thank you. 02:31:49

7 Q. (By Mr. Pelletier) Could you explain to me 02:31:58

8 what Exhibit 385 is? 02:32:00

9 A. It appears to be a draft of a unanimous 02:32:01

10 written consent in lieu of a special meeting of board 02:32:11

11 of directors. 02:32:14

12 Q. And is the purpose of this written consent 02:32:16

13 to enable you to engage in an investigation into 02:32:19

14 distributions to Andrew Yao? 02:32:23

15 A. It appears to be. I'm not sure -- since 02:32:24

16 it's not signed, I'm not sure that it's effective. 02:32:30

17 Q. Do you know whether a set of these written 02:32:33

18 consents were ever executed? 02:32:39

19 A. I am not sure. I can't say for sure. 02:32:40

20 Q. It's fair to say that you did engage in a 02:32:42

21 good deal of investigation into distributions to 02:32:46

22 Andrew Yao as part of your role in the bankruptcy 02:32:48

23 proceedings; is that fair? 02:32:51

24 A. That's fair. 02:32:53

25 Q. In your investigation, did you ever 02:32:54

1	discover whether Rod Gagne or the law firm of Pepper	02:32:56
2	Hamilton were in any way involved in distributions	02:33:00
3	made to Andrew Yao?	02:33:02
4	A. In distributions to Andrew Yao himself?	02:33:03
5	Q. Yes.	02:33:12
6	A. No.	02:33:13
7	Q. Would you ever hear -- did anybody ever	02:33:13
8	tell you that they had a role in distributions from	02:33:16
9	the companies? When I say "they," I mean Rod Gagne or	02:33:18
10	Pepper Hamilton have a role in distributions from the	02:33:22
11	companies to Andrew Yao?	02:33:25
12	A. I -- I don't -- I don't recall. I do know	02:33:26
13	that -- that there were -- there were some notes or I	02:33:32
14	believe it was notes or shareholder -- that Gagne or	02:33:43
15	his wife were -- were -- did have some notes or some	02:33:49
16	shareholder type of arrangement there, so that -- but	02:33:55
17	I don't -- I don't think that has anything to do with	02:34:01
18	Andrew Yao's distributions.	02:34:03
19	Q. Your testimony is that you don't believe	02:34:06
20	that the notes that you just described are related in	02:34:10
21	any way to distributions from the companies to Andrew	02:34:13
22	Yao?	02:34:16
23	A. I don't believe so, no.	02:34:16
24	MR. PELLETIER: Can we go off the record,	02:34:23
25	please?	02:34:25

1 field work for the audit was done before I joined, and 07:49:48  
2 it came to a stopping point probably before April, and 07:49:52  
3 we were just left with issues that had to be resolved 07:49:59  
4 before financial statements could be issued, and -- 07:50:02  
5 and they never got resolved. 07:50:09

6 MS. GOODMAN: I have no other questions. 07:50:13  
7 Thank you, Mr. Zulauf. 07:50:14

8 THE WITNESS: You're welcome. 07:50:15

9 EXAMINATION 07:50:15

10 QUESTIONS BY MR. EPSTEIN: 07:50:15

11 Q. I'll go right ahead then. This is Neil 07:50:17  
12 Epstein, Mr. Zulauf. I represent Robert Bast, Pam 07:50:20  
13 Gagne, Rod Gagne other than his role as an attorney, 07:50:24  
14 and certain trusts, family trusts. Do you have any 07:50:28  
15 reason to believe that Mr. Bast participated in the 07:50:34  
16 operation of Student Finance? 07:50:38

17 A. Not -- certainly not during my tenure and 07:50:39  
18 I'm not familiar with -- with any of that in any of 07:50:44  
19 the conversations that I had or recall with any of the 07:50:50  
20 principals of Student Finance. 07:50:54

21 Q. So no -- no one ever said that to you, 07:50:56  
22 correct? 07:50:58

23 A. No one ever said that to me, that is 07:50:59  
24 correct. 07:51:00

25 Q. Is that also true of Pam Gagne? 07:51:00

1 A. That is true. Exactly the same. 07:51:02

2 Q. With respect to a company, any company, but 07:51:08

3 looking at Student Finance, that they didn't have 07:51:13

4 financials for the years 2000 and 2001, would that 07:51:17

5 have an effect on its ability to go at and get interim 07:51:22

6 lending? 07:51:25

7 MR. BUTLER: Objection. 07:51:28

8 A. I'm sorry. The financials for 2000 I think 07:51:28

9 we did have, and I think we did look at them here 07:51:33

10 today. 07:51:36

11 Q. (By Mr. Epstein) When did they come out, 07:51:39

12 do you recall? 07:51:40

13 A. I think the date of the audit opinion was 07:51:40

14 April of '0 -- was that for 2001. That would have 07:51:43

15 been -- I don't know when they were issued. I don't 07:51:50

16 have that information in front of me. 07:51:52

17 Q. So you think there were financials to 2001? 07:51:54

18 A. No, not 2001. I was talking about 2000. 07:51:59

19 2001 were the statements that were never issued, 07:52:02

20 and -- 07:52:07

21 Q. Would it be difficult for a company to go 07:52:07

22 out and borrow money on an interim basis without 07:52:09

23 financial statements? 07:52:12

24 A. It definitely doesn't help. It adds 07:52:13

25 credibility to have audited financial statements when 07:52:20

1 you're going out looking for financing. So I would 07:52:23  
2 have to say, yeah, that's -- that's a good -- that's a 07:52:25  
3 good conclusion. 07:52:29  
4 Q. That also have an impact on the interest 07:52:31  
5 that a lender might charge a company? 07:52:33  
6 A. It could. It could. To the extent there's 07:52:35  
7 higher risk, a lender will charge a higher interest 07:52:40  
8 rate or at least higher perceived risk. That's a 07:52:43  
9 general observation I can give. 07:52:48  
10 Q. Have you found that to be true in your 07:52:50  
11 experience as a CFO? 07:52:52  
12 MR. BUTLER: Objection. 07:52:54  
13 A. CFO of Student Finance? 07:52:56  
14 Q. (By Mr. Epstein) No, of any company. 07:52:58  
15 You're a -- you're a CFO today, correct? 07:53:00  
16 A. No, I'm a director of finance. I report to 07:53:03  
17 a CFO here. 07:53:05  
18 Q. Oh, I'm sorry. I misunderstood. 07:53:06  
19 A. But in -- you know, the general -- you 07:53:08  
20 know, this is more of a general lending kind of 07:53:13  
21 conclusion, is that the more uncertainty or perceived 07:53:19  
22 risk there is, the higher the interest rate, the worse 07:53:24  
23 the loan terms. I mean, that's just a general lending 07:53:26  
24 conclusion. 07:53:30  
25 Q. And I think you testified that when you 07:53:31